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Comparative Study of the Authority of the MPR During the New Order and Reform Order from the Perspective of the Theory of Dignified Justice

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Abstract: "Sovereignty is in the hands of the people and is implemented according to the Constitution." Paragraph 2 of Article 1 of the 1945 Constitution asserts that the sovereignty of citizens must be defended through constitutional law. Sovereign people do not mean freedom to act arbitrarily either in actions or in providing aspirations for the interests of citizens in an authoritarian manner but in the form of consensus deliberation in institutions. The formation of rules for implementing the authority of the MPR institution is deemed necessary to be regulated in a separate law, outside of "Law no. 17" of 2017 concerning MD3, considering that the MPR has fundamental authority and is the sole implementer of popular sovereignty. This is different from people's representative institutions such as the DPR, DPD and DPRD. Regulations or legislation for the special authority of the MPR outside "Law no. 17 of 2017" About MD3. So as not to give rise to interpretations that have similar authority. This formation is intended to carry out none other than the goals of the nation, based on state philosophy and the unique values of the Indonesian nation in accordance with the philosophy contained in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia and the 4th principle of Pancasila. So it can be concluded that in regulating the authority of the MPR it is necessary to create a special law/special authority that regulates the MPR so that the function of the MPR can be optimal in making policies but still listening to the aspirations of the DPD, DPR, DPRD, and the wider community who are members of skilled professions such as academics, and other professions related to this authority.

Keywords: Authority of the MPR, New Order-Reformation, Theory of Dignified Justice

I. INTRODUCTION

The early history of the reform era in Indonesia from 1998, various crises hit the Indonesian nation, starting with the obvious economic crisis, then reaching various sectors such as social, political, and constitutional crises. This crisis event gave birth to a reformist movement that wanted to make changes in Indonesia, especially the supremacy of law and changes to the 1945 Constitution. Regarding the changes desired in this reform event, the highest power is in the hands of the people.

The rationale for the amendments to the 1945 Constitution which was carried out in 1999-2002 was, among other things, to review and reorganize existing problems (1) "The 1945 Constitution" established a constitutional structure that rested on supreme power in the hands of the MPR which fully exercised national sovereignty. This problem results in the absence of checks and balances in constitutional institutions. Government power is no longer connected to the people; (2) "The 1945 Constitution" at that time gave enormous powers to the executive (president), before the changes in the "amended 1945 Constitution" it was stated that the President was the highest administrator of state government under the DPR. The two branches of national power which should be separated and used by different national institutions but instead are in the hands of the President which makes the principle of checks and balances not work and has the potential to lead to the birth of authoritarian power, (3) The 1945 Constitution before the amendments contained flexible articles thus giving rise to more than one interpretation (multiple interpretations), for example "article 7 of the 1945 Constitution" before it was amended stated that the president and vice president held office for five years and after that could be re-elected. The composition of this article has more than one interpretation, the first is the first interpretation that the President and his

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Deputy can only serve a maximum of two terms and after that can be re-elected, namely the 1945 Constitution gives excessive power to the President to control important matters according to law.

The formation of the MPR's position and authority regulations in "the 1945 Constitution of the Republic of Indonesia" has a philosophical, sociological, and juridical background [1]. Philosophically, it is in accordance with the preamble to the 1945 NRI Constitution which is reflected in the 4th principle of Pancasila which reads: Democracy led by wisdom in deliberation/representation and then confirmed in the 1945 NRI Constitution Article 1 paragraph (2) which reads: Sovereignty is in the hands of the people and implemented according to the Constitution. Sociologically, the regulation of the MPR institution which is combined with the DPR, DPD and DPRD in one Law concerning the MPR, DPR, DPD and DPRD is regulated in Law Number 17 of 2014 concerning the "People's Consultative Assembly", the "People's Representative Council", the "Regional Representative Council", and "the Regional People's Representative Council" (UU MD3) is felt to be inappropriate, because these institutions have unequal sub-tasks and authorities. Juridically, the MPR is one of the state institutions whose formation is mandated by the 1945 Constitution of the Republic of Indonesia. As a basic regulation, the regulations related to the MPR in the 1945 Constitution of the Republic of Indonesia only contain a description of its authority and several basic provisions. The merger of the MPR arrangements with other state institutions, namely the DPR, DPD and DPRD, creates constitutional problems, it is said to be inappropriate because it is not in line with the constitutional mandate.

This shows that there are several assumptions in the view of the concept of constitution in state administration that since the development of its formation it has experienced problems both situational and conditional in nature and difficulties when determining firm boundaries within the scope of state administration with various perspectives from the backgrounds of decision makers. This condition cannot be denied since the beginning of the development of the formation of the unitary state of the Republic of Indonesia at the beginning of its independence, until the fall of the New Order government in 1998, which was the starting point for the formation of a new government with several changes in its basic law (a constitution) as the basis for a new constitution called the amended constitution.

This is different from countries that have a stable government system with an established constitutional form such as England or the United States with its parliamentary system, although they have also developed several changes in the constitution but have not at all changed the basics of their constitutional system, these changes These changes were made due to constitutional jurisprudence, especially through the judicial decision review model [2].

When compared with other forms of government systems, for example in America. The state's highest institutions are united in the ' *House of Representatives'* which represents the people of the country, while each representative in the state is the senate or the person is called a senator as a member of the senate. Each state representative will be represented by two members each from each region of the country or state. The two-chamber system implemented by America is a form of "trias politica" practice [3].

The existence of people's representative institutions in Indonesia today is somewhat different from the people's representation systems of modern countries in the world. The three representative institutions at the central level, namely the MPR, DPR and DPD, are somewhat difficult to explain using the theories of representation that are generally given to students. As

[1]["People's Consultative Assembly", Republic of Indonesia], ARRANGEMENTS FOR THE IMPLEMENTATION OF MPR AUTHORITY, (Focus Discussion Group Paper, MPR RI Study Body, 12 September 2023), p. 2-4.
[2]Huda, N., *Indonesian Constitutional Politics; Study of the Dynamics of Changes to the 1945 Constitution* , Print 1, (Yogyakarta: FH UII Press, 2003), p. 9-10.
[3]Harianto, GS, "REGIONAL REPRESENTATIVE COUNCIL IN ACCORDANCE WITH THE 1945 NRI UUD", (Journal of State Administration - Volume 003 June 2017)

explained by Saragih [4], the current Indonesian Parliamentary System, whether it is a one-chamber, two-chamber or three-chamber system, will have different answers when asked to students even though they have been taught that there is a representative system in this world, there is a one-chamber system and there is a two-chamber system. .

Thus, the main reason is that the system of government in the unitary state of the Republic of Indonesia is different from the parliamentary system of government, so it would be better if institutional arrangements by people's representatives in Indonesia currently prioritize constitutional concepts that are in accordance with their own principles and philosophy, namely a foundation that prioritizes Pancasila ideology, where the development of the philosophy itself has its roots within the nation itself which consists of various tribes, customs and cultures. Regardless of parliamentary or non-parliamentary system, one chamber or two chambers, Pancasila is the basis and philosophy of life of the Indonesian nation.

From this background, a formulation of the problem of how to change the constitution before and after the reform era can be drawn, especially the regulation of the implementation of the authority of the "MPR in Law no. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council" (UU MD3) from the perspective of the theory of dignified justice?

II. RESEARCH METHODS

Normative legal research focuses more on the scope of legal conceptions, legal principles, and legal rules. Based on existing doctrine, normative legal research is a type of legal research methodology that bases its analysis on applicable laws and regulations that are relevant to the legal issues that are the focus of the research.

III. RESULTS AND DISCUSSION

Since the constitutional changes from 5 July 1959 – the reform era, there have been changes in the written constitution, in this case the basic constitutions of law (UUD). A country's constitution is essentially the highest basic law which contains matters regarding state administration.

Before the reform era (before 1999), several important changes in the written constitution included:

1. The existence of executive power in implementing state legislation.
2. There is consultative power exercised by the previous Supreme Advisory Council in providing state considerations to the government.
3. The existence of legislative power in forming state legislation is carried out by the House of Representatives together with the president.

After the New Order withdrew in 1999, one of the important agendas of the reform movement was the amendment to "the 1945 Constitution" which was then successfully implemented for 4 consecutive years through the MPR Annual Session, namely in 1999, 2000, 2001 and 2002. Reform in the legislative system Indonesia did this by implementing amendments to "the 1945 Constitution" as the legal basis for the Indonesian state. Some important changes include:

1. The power of the MPR, where previously the MPR had unlimited power, was changed to sovereignty is in the hands of the people and is implemented according to the Constitution.
2. The power to make laws is given to the DPR, but the President still holds absolute veto rights to reject all draft laws made by the DPR at the discussion stage.
3. The formation of the "Regional Representative Council (DPD)" is intended to provide opportunities for regional communities to play an active role in implementing the government

[4]Saragih, BR, "THE POSITION AND AUTHORITY OF THE MPR IN THE FUTURE" (Paper presented at the focus discussion group (FGD), 12 September 2023)

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system, where this idea is in line with the existing concept of regional autonomy. However, the DPD's authority is very limited when compared to the DPR's authority.

Based on the changes before and after "the amendment to the 1945 Constitution". Seeing some of these changes, "the people's assembly" institution MPR as the highest state institution has become equal to the President, DPR, DPD and other government institutions. The MPR RI is not the only national institution that exercises popular sovereignty, but each national institution carries out popular sovereignty in accordance with its respective authorities.

Thus, there are advantages and disadvantages of constitutional changes before and after the reform era . Before the 1945 Constitution was amended, it had several weaknesses as follows [5]:

1. Executive power is too large without *checks and balances* .
2. Most of the formulations of the 1945 Constitution are very simple, general, or unclear, giving rise to multiple interpretations.
3. The elements of constitutionalism were not sufficiently elaborated in "the 1945 Constitution".
4. "The 1945 Constitution" gives the president too much authority to regulate various important matters by law.
5. Many important content materials are regulated in the explanation of "the 1945 Constitution" and are not included in the Articles of "the 1945 Constitution".

After being amended into "the 1945 Constitution" of "the Republic of Indonesia", it has the following advantages [6]:

1. Improving the basics of state regulations as stated in the preamble to the 1945 constitution to achieve national goals and strengthen the basis of the Unitary State of the Republic of Indonesia based on Pancasila.
2. Improving the basics of implementing and guaranteeing popular sovereignty and expanding the scope of citizen participation in developing democratic understanding.
3. Improving the basics of development and guarantees for Human Rights to adapt to developments.

The word "authority" has the same root word in the dictionary of foreign languages, " *authority* " becomes "authority" which means power, namely the rights and powers that must be exercised by someone. Legal subjects are anything that can have legal rights and obligations to act. Agent means acting in accordance with the law. Every defender of rights and obligations has legal authority, while the relationship between rights and authority or authority is interdependent or closely related, authority arises from rights, from the existence of rights, authority arises.

"The People's Consultative Assembly" (MPR) as the embodiment of the people has brought changes that have an impact on many things, including the Indonesian political system, especially the public institution, "the People's Consultative Assembly" (MPR) [7]. As a result of these changes, the position of the MPR as the highest state institution has become a high state institution whose position, authority and power are equivalent to the MPR, namely constitutive legislative power [8].

Indeed, the essence of being an institutionalized national unit basically has a natural need to perfect its existence, such as changes in the constitution from supreme power to equal power, so that the people's council institution will have equal authority among other high state institutions. The need for improvement cannot be seen from one idea but from various backgrounds within the institution which will form its own arrangements and it is not easy to achieve perfection.

The Theory of Dignified Justice fills the weakness of the unclear formulation of "Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia" by pointing out that if the

[5]Tamrin, A., Constitutional Changes and Indonesian State Administration Reform, (Journal Citra Hukum, Vol. II No. 1, June 2015), p. 94.
[6]Ibid., p. 95.
[7]Asshiddiqie, J., " *Introduction to Constitutional Law*" , (Jakarta: Rajawali Press, 2016), p. 298-299
[8]Ibid.

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substance of "Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia" is legal sovereignty (supremacy of law), then that is the highest Belief in the Almighty God which cannot be separated from other principles in Pancasila which is formulated in the "Fourth Alenia of the Preamble to the 1945 Constitution of the Republic of Indonesia". The specific meaning of the Most High is Allah the Almighty as stated explicitly in the "Third Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia". This philosophical thinking often leads jurists to express the idea that ethics or values are higher than the law. This statement is wrong, but if the meaning is the values in the highest law, Pancasila, as stated above, is not a mistake [9].

The arrangements for forming separate legislation in carrying out its duties, the people's assembly is based on its sovereignty as stated in the "Preamble to the 1945 Constitution of the Republic of Indonesia". Apart from that, Pancasila is the basis of the state which is reflected in the 4th principle of Pancasila "The people are led by wisdom in deliberation/representation", from this fourth principle it can be concluded that Indonesia is a country based on democracy which is based on the principle of popular sovereignty. Popular sovereignty is based on Pancasila, which is the political basis and philosophical basis (philosophische *grondslag)* for the formation of the Indonesian state, further expressly derived in Article 1 paragraph (2) which reads: Sovereignty is in the hands of the people and is implemented according to the Constitution. Thus, it can be said that Pancasila is an inseparable part of the legal system itself because Pancasila is the source of all sources of Indonesian state law.

In order for Pancasila with all its ideal concepts to be effective in the process of legal development (legislation), and to confirm Pancasila as a paradigm in the formation of law in Indonesia, at least 2 frameworks of thought are needed, namely the exemplary factor of the nation's leaders (political elite), and second is the legal factor (legislation). The example of these leaders or political elites is at least in building a commitment to always start discussions and then decide on every policy based on Pancasila based on the high belief that Pancasila must be the spirit and breath of all legal policies that are made as seen in the Academic Paper in setting out the background behind the thoughts of political elites and scientific studies related to the juridical, sociological and philosophical foundations of the laws and regulations that will be formed. Apart from that, it also confirms the commitment of the political elite in a legal anchor that will provide certainty. If no one maintains this commitment, then the commitment to Pancasila will only remain mere discourse and rhetoric.

Every state and government administration must have legitimacy, namely the authority granted by law. Thus, the substance of the principle of legality is authority, namely Het vermogen tot het verrichten van bepearled rechtshandelingen, namely the ability to carry out certain legal actions. Theoretically, authority originates from statutory regulations which are obtained through three *sources*, including: attribution [10], delegation and mandate. According to Philipus M. Hadjon, [11]there are two main types of obtaining authority, namely attribution and delegation. Meanwhile, mandates are only occasionally used.

As the sole executor of popular sovereignty, the MPR has fundamental authority. Meanwhile, the authority of the MPR institution as stated in Law no. 17 of 2014 concerning MD3 Part Two, Paragraph 1, Article 4 letters a to f which are further explained in MPR RI Regulation Number 1 of 2019 concerning the Rules of Procedure of the MPR RI and bearing in mind that the MPR has a strategic position and authority in the Indonesian constitutional system, Whether the arrangements for the implementation of the MPR's authority in the MD3 Law and the MPR Rules

[9]Gunawan, S., and Prasetyo, T., "Law in the Theory of Dignified Justice", (Yogyakarta: K-Media, 2022), p. 168.
[10]Mandala, GP, The Authority of the DPR in Determining and Supervising the APBD According to the 1945 Constitution of the Republic of Indonesia (Thesis--Udayana University, Denpasar, 2011), p. 39.
[11]Philipus M. Hadjon, *Introduction to Indonesian State Administrative Law* (Yogyakarta: Gajah Mada Press, 2005), p. 91.

and Regulations are appropriate and in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia really needs to be carried out in separate arrangements so that they are appropriate and in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

Legislative regulations are also made according to what is happening in society so that they can become rules used by society and become guidelines for society to create a just and prosperous society that prioritizes Pancasila values in national and state life. All of these things have the implication that in forming laws, or authorized legal institutions or anyone in forming other related government policies cannot be separated from Pancasila.

IV. CONCLUSION

The formation of rules for implementing the authority of the MPR institution is deemed necessary to be regulated in a separate law, outside of "Law no. 17 of 2017 "Regarding MD3, considering that the MPR has fundamental authority and is the sole implementer of the people's sovereignty. This is different from people's representative institutions such as the DPR, DPD and DPRD. Regulations or legislation for the special authority of the MPR outside "Law no. 17 of 2017" About MD3. So as not to give rise to interpretations that have similar authority. This formation is intended solely to implement the ideals of the nation, the basic philosophy of the state, and the unique values of the Indonesian nation in accordance with the philosophy contained in the 4th paragraph of the "Preamble to the 1945 Constitution of the Republic of Indonesia" and the 4th principle of Pancasila.

So it can be concluded that in regulating the authority of the MPR it is necessary to create a special law/special authority that regulates the MPR so that the function of the MPR can be optimal in making policies but still listening to the aspirations of the DPD, DPR, DPRD, and the wider community who are members of skilled professions such as academics, and other professions related to this authority.

So that the authority of the MPR, whether in trials or MPR meetings, is increasingly optimal in making decisions in the interests of the people by prioritizing the values of Pancasila with a dignified justice theory perspective approach, "Nguwongke-uwong".

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